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2 **IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**
3

4 **DIVISION OF ST. THOMAS AND ST. JOHN**
5

6 SALVATORE GERACE and DOTTIE
7 GERACE,
8

9 Plaintiffs,
10
11 v.
12

13 VARLACK VENTURES, INC., HOLLIS B
14 CORP, J QUEST CORP, T.K. SAILING
15 CORP dba NEW HORIZONS CHARTERS,
16

17 Defendants.
18

19 **CIVIL CASE NO. 3:15-cv-0074**
20 **COMPLAINT FOR DAMAGES**
21 **JURY TRIAL DEMANDED**
22

23 Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, hereby alleges as follows:

24 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**
25

26 **I.**
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28 **JURISDICTION**
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30 1. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, are residents of the City
31 of Raleigh, State of North Carolina.
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33 2. Plaintiffs are informed and believe, and based thereupon allege, that Defendant,
34 VARLACK VENTURES, INC., is a Virgin Islands corporation and is doing business within the
35 Territory of the United States Virgin Islands, and, at all times herein mentioned, was the owner,
36 operator and entity responsible for the ownership, operation and control of the M/V Capital Venture,
37 a 96 ton, 105 foot passenger ferry, ship number 643732.
38

39 3. Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
40 HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW HORIZONS CHARTERS,
41 are Virgin Islands corporations and are doing business within the Territory of the United States
42 Virgin Islands, and, at all times herein mentioned, were the owners, operator and others responsible
43

1 for the ownership, operation and control of the M/Y New Horizons, a 43 ton, 65 foot sailing vessel,
2 ship number 953206.

3 4. The citizenship of Plaintiffs and Defendants is diverse and the amount in controversy,
4 exclusive of interests and costs, exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00).
5 Therefore, this Court has jurisdiction over the matter pursuant to 28. U.S.C. § 1332.

II.

FIRST CAUSE OF ACTION
(SALVATORE GERACE and DOTTIE GERACE vs. VARLACK VENTURES, INC.)

9 5. Plaintiffs reallege paragraphs 1 through 4, and incorporates the same by reference as
10 though fully set forth herein.

11 6. Plaintiffs are informed and believe, and based thereupon alleges, that Defendants,
12 VARLACK VENTURES, INC., at all times relevant hereto, are, and were, the owners and operators
13 of the M/V Capital Venture, a passenger ferry operating between the St. Thomas and St. John, in
14 the Territorial waters of the United States Virgin Islands.

15 7. On or about October 22, 2014, at or near 6:00 p.m., Plaintiffs, SALVATORE
16 GERACE and DOTTIE GERACE were passengers on the M/Y New Horizons, which had left for
17 a sunset cruise from Sapphire Beach Marina on St. Thomas, Virgin Islands and was operating in
18 Pillsbury Sound. The vessel M/Y New Horizons was being operated under power and the sails were
19 not raised.

20 8. At that time and place, the M/V Capital Venture had departed from Red Hook and
21 was traveling to St. John. At approximately 0.5 NM East of the Red Hook Channel Entrance Buoys
22 the M/V Capital Venture collided with the port stern of the M/Y New Horizons. Plaintiffs
23 SALVATORE GERACE and DOTTIE GERACE were seated on the port stern side of the M/Y New
24 Horizons and sustained injuries and damages during the collision.

25 9. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
26 mentioned, Defendant, VARLACK VENTURES, INC., as the owner and operator of the M/V
27 Capital Venture was the employer of the captain/master of the vessel and responsible for the
28 operation and control of the vessel while under way.

1 10. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
 2 mentioned, Defendants, VARLACK VENTURES, INC., were required to operate their vessel in
 3 accordance with the standard of care and in compliance with the navigation rules and regulations as
 4 promulgated by the U.S. Department of Transportation, United States Coast Guard, which include,
 5 but are not limited to, the following provisions:

6 Rule 6:Safe speed. Every vessel shall at all times proceed at a safe speed so that she can take
 7 proper and effective action to avoid collision and be stopped within a distance appropriate
 8 to the prevailing circumstances and conditions.

9 Rule 7: Risk of Collision. Every vessel shall use all available means appropriate to the
 10 prevailing circumstances and condition to determine if risk of collision exists. If there is any
 11 doubt such risk shall be deemed to exist.

12 Rule 8: Action to Avoid Collision. Any action taken to avoid collision shall, if the
 13 circumstances of the case admit, be positive, made in ample time and with due regard to the
 14 observance of good seamanship.

15 Rule 13: Overtaking. [A]ny vessel overtaking any other shall keep out of the way of the
 16 vessel being overtaken. A vessel shall be deemed to be overtaking when coming up with her
 17 vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with
 18 reference to the vessel she is overtaking, that at night she would be able to see only the stern
 19 lights of the vessel but neither of her sidelights.

20 Rule 16: Action by Give-way Vessel. Every vessel which is directed to keep out of the way
 21 of another vessel shall, so far as possible, take early and substantial action to keep well clear.

22 Rule 18: Responsibilities Between Vessels. Except where Rules 9, 10 and 13 otherwise
 23 require. . .(iv) a sailing vessel.

24 11. Plaintiffs are informed and believe, and based thereupon allege, that the
 25 captain/master of the M/V Capital Venture was negligent and careless in the operation of the M/V
 26 Capital Venture by violating one or more of the above referenced Navigation rules and otherwise
 27 conducting himself in a manner below the standard of care of a master operating a passenger ferry.

28 12. Plaintiffs are informed and believe, and based thereupon allege, that a direct and

1 proximate result of the negligence and careless of Defendant, VARLACK VENTURES, INC., by
2 and through the captain/master of the M/V Capital Venture, Plaintiffs sustained injuries and
3 damages, as herein alleged.

4 13. As a direct and proximate result of the negligence of Defendant, as hereinabove
5 alleged, Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, were hurt and injured in their
6 health, strength and activity, in all parts of their body, and sustained shock and injury to their nervous
7 system and person, all of which injuries have caused and continue to cause Plaintiffs great mental,
8 physical and nervous anxiety, and pain and suffering. Plaintiffs, SALVATORE GERACE and
9 DOTTIE GERACE, are informed and believe, and thereon allege, that these injuries will result in
10 some permanent disability to Plaintiffs, all to their general damage, in an amount to be proven at
11 time of trial.

12 14. As a further direct and proximate result of the negligence of Defendant as hereinabove
13 alleged, Plaintiff, SALVATORE GERACE and DOTTIE GERACE, were required to, and did,
14 employ physicians, surgeons and therapists to treat and care for them, and did sustain expenses for
15 such medical treatment and care, hospitalization, medicine, and for other and further medical and
16 incidental care, for which Plaintiffs have incurred liability in an amount as yet unascertained.
17 Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, pray leave of Court to amend and/or
18 supplement this Complaint to insert the actual and reasonable value of all medical and incidental
19 expenses when same have been ascertained, or to prove same at time of trial.

20 15. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, are informed and
21 believe, and based thereupon allege, that as a further direct and proximate result of the negligence
22 of Defendant, as hereinabove alleged, they will necessarily require additional medical care,
23 hospitalization, medicines, and other and further medical attention in the future and will incur
24 liability therefrom. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, pray leave of Court
25 to amend and/or supplement this Complaint to insert the actual and reasonable value of all such
26 additional medical and incidental expenses when same have been ascertained, or to prove same at
27 time of trial.

28 16. As a further direct and proximate result of the negligence of Defendant, as

1 hereinabove alleged, Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, became
2 incapacitated and was prevented from following their usual occupation for an undetermined period
3 of time; and as a result thereof, Plaintiffs suffered a loss of earnings and earning capacity and ability
4 and other financial losses in an undetermined amount. Plaintiffs, SALVATORE GERACE and
5 DOTTIE GERACE, pray leave of Court to amend and/or supplement this Complaint to include the
6 exact amount of said loss of earnings and earning capacity and ability when ascertained, or to prove
7 same at time of trial.

III.

SECOND CAUSE OF ACTION
SALVATORE GERACE and DOTTIE GERACE vs. HOLLIS B CORP, et al.)

11 17. Plaintiffs reallege paragraphs 1 through 16, and incorporates the same by reference
12 as a part hereof as though fully set forth herein.

13 18. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
14 mentioned, Defendants, HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW
15 HORIZONS CHARTERS, as the owner and operator of the M/Y New Horizons were the employers
16 of the captain/master of the vessel and responsible for the operation and control of the vessel while
17 under way.

18 19. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
19 mentioned, Defendants, HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW
20 HORIZONS CHARTERS, were required to operate their vessel in accordance with the standard of
21 care and in compliance with the navigation rules and regulations as promulgated by the U.S.
22 Department of Transportation, United States Coast Guard, which include, but are not limited to, the
23 following provisions:

Rule 6:Safe speed. Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

Rule 7: Risk of Collision. Every vessel shall use all available means appropriate to the prevailing circumstances and condition to determine if risk of collision exists. If there is any

1 doubt such risk shall be deemed to exist.

2 Rule 8: Action to Avoid Collision. Any action taken to avoid collision shall, if the
3 circumstances of the case admit, be positive, made in ample time and with due regard to the
4 observance of good seamanship.

5 Rule 17: Action by Stand-on Vessel.

6 (a) Where one of two vessel is to keep out of the way of the other shall keep her course and
7 speed. The later vessel may however take action to avoid collision by her maneuver alone,
8 as soon as it becomes apparent to her that the vessel required to keep out of the way is not
9 taking the appropriate action in compliance with these Rules.

10 (b) When, from any cause, the vessel required to keep her course and speed finds herself so
11 close that a collision cannot be avoided by the action of the give-way vessel alone, she shall
12 take such action as will best aid to avoid collision.

13 20. Plaintiffs are informed and believe, and based thereupon allege, that the
14 captain/master of the M/Y New Horizons was negligent and careless in the operation of the M/Y
15 New Horizons by violating one or more of the above referenced Navigation rules and otherwise
16 conducting himself in a manner below the standard of care of a master operating a sailing vessel
17 under power.

18 21. Plaintiffs are informed and believe, and based thereupon allege, that a direct and
19 proximate result of the negligence and carelessness of Defendants, HOLLIS B CORP, J QUEST CORP,
20 T.K. SAILING CORP dba NEW HORIZONS CHARTERS, by and through the captain/master of
21 the M/Y New Horizons, Plaintiffs sustained injuries and damages, as herein alleged.

22 22. As a direct and proximate result of the negligence of Defendants, as hereinabove
23 alleged, Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, were hurt and injured in their
24 health, strength and activity, in all parts of their body, and sustained shock and injury to their nervous
25 system and person, all of which injuries have caused and continue to cause Plaintiffs great mental,
26 physical and nervous anxiety, and pain and suffering. Plaintiffs, SALVATORE GERACE and
27 DOTTIE GERACE, are informed and believe, and thereon allege, that these injuries will result in
28 some permanent disability to Plaintiffs, all to their general damage, in an amount to be proven at

1 time of trial.

2 23. As a further direct and proximate result of the negligence of Defendants, as
3 hereinabove alleged, Plaintiff, SALVATORE GERACE and DOTTIE GERACE, were required to,
4 and did, employ physicians, surgeons and therapists to treat and care for them, and did sustain
5 expenses for such medical treatment and care, hospitalization, medicine, and for other and further
6 medical and incidental care, for which Plaintiffs have incurred liability in an amount as yet
7 unascertained. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, pray leave of Court to
8 amend and/or supplement this Complaint to insert the actual and reasonable value of all medical and
9 incidental expenses when same have been ascertained, or to prove same at time of trial.

10 24. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, are informed and
11 believe, and based thereupon allege, that as a further direct and proximate result of the negligence
12 of Defendants, as hereinabove alleged, they will necessarily require additional medical care,
13 hospitalization, medicines, and other and further medical attention in the future and will incur
14 liability therefrom. Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, pray leave of Court
15 to amend and/or supplement this Complaint to insert the actual and reasonable value of all such
16 additional medical and incidental expenses when same have been ascertained, or to prove same at
17 time of trial.

18 25. As a further direct and proximate result of the negligence of Defendants, as
19 hereinabove alleged, Plaintiffs, SALVATORE GERACE and DOTTIE GERACE, became
20 incapacitated and was prevented from following their usual occupation for an undetermined period
21 of time; and as a result thereof, Plaintiffs suffered a loss of earnings and earning capacity and ability
22 and other financial losses in an undetermined amount. Plaintiffs, SALVATORE GERACE and
23 DOTTIE GERACE, pray leave of Court to amend and/or supplement this Complaint to include the
24 exact amount of said loss of earnings and earning capacity and ability when ascertained, or to prove
25 same at time of trial.

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1 WHEREFORE, Plaintiffs prays judgment against Defendants, and each of the, as follows:

2 1. For general damages, all in an amount in excess of \$75,000 and to be proven at the
3 time of trial;

4 2. For medical and related expenses, past, present and future, all in an amount to be
5 proven at the time of trial;

6 3. For loss of earnings or earning ability, past, present and future, all in an amount to be
7 proven at the time of trial;

8 4. For costs of suit incurred herein; and

9 5. For such other and further relief as this Court deems just and proper.

10 Dated : November 8, 2015

LAW OFFICES OF FRIEDBERG & BUNGE

11 By: *s/ THOMAS F. FRIEDBERG, ESQ.*

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18 **DEMAND FOR JURY**

19 Plaintiffs hereby demand a jury trial pursuant to Rule 38, of the Federal Rules of Practice.

20 Dated : November 8, 2015

LAW OFFICES OF FRIEDBERG & BUNGE

21 By: *s/ THOMAS F. FRIEDBERG, ESQ.*

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